

BOARD OF APPEALS CASE NO. 4975

BEFORE THE

APPLICANT: Carl Gerkens

ZONING HEARING EXAMINER

REQUEST: Variance to permit a second
tenant dwelling on 41.37 acres in the
AG District; 5113 Fawn Grove Road,
Pylesville

OF HARFORD COUNTY

Hearing Advertised

Aegis: 9/22/99 & 9/29/99

Record: 9/24/99 & 10/1/99

HEARING DATE: November 17, 1999

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, Carl Gerkens, appeared before the Hearing Examiner requesting a variance to Section 267-26(D)(6) of the Harford County Code, to allow a second tenant dwelling on less than 100 acres in an Agricultural District.

The subject parcel is located at 5113 Fawn Grove Road in the Fourth Election District. The parcel is identified as Parcel No. 212, in Grid 1-D, on Tax Map 9. The parcel contains 41.37 acres, more or less, all of which is zoned Agricultural.

Mr. Carl Gerkens appeared and testified that the subject parcel contains 41.37 acres and is improved by a dwelling and a tenant house. Mr. Gerkens said that the original farm house is occupied by his grandson, Brian Gerkens, and the tenant house is occupied by his son, Carl J. Gerkens. Mr. Gerkens said that he would like to construct a second tenant house on the parcel to be occupied by his granddaughter, Lisa Gerkens, in order that she may live on the parcel and conduct a greenhouse and nursery operation.

On cross-examination, Mr. Gerkens testified that he has additional development rights available on the parcel which could be utilized by his granddaughter.

Several area residents appeared and testified in opposition to the Applicant's request, and indicated that the Applicant has additional development rights which should be used before a variance is considered, that the parcel contains wetlands which should be evaluated, that the Applicant has failed to prove uniqueness which would justify approval of a variance, and that development above and beyond improvements permitted by the Zoning Code would impact property values.

Case No. 4975 - Carl Gerkens

Mr. Anthony S. McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Staff has reviewed the Applicant's request and that the subject parcel is improved by a two-story frame farm house and a tenant house. Mr. McClune went on to testify that the Staff is of the opinion that the Applicant has not adequately justified the requested variance and that the Department of Planning and Zoning recommends denial of the request.

CONCLUSION:

The Applicant is requesting a variance to Section 267-26(D)(6) of the Harford County Code, to allow a second tenant dwelling on less than 100 acres. The Applicant is proposing a second tenant dwelling on the parcel which contains 41.37 acres.

Section 267-26(D)(6) provides:

"Agricultural tenant house, including mobile homes, for bona fide farm workers when not more than one (1) such structure is provided on parcels of eleven (11) to fifty (50) acres and not more than one (1) additional tenant house per fifty (50) acres thereafter."

The uncontradicted evidence is that the subject parcel contains 41.37 acres and is improved by a farm house and a tenant house, occupied by the Applicant's son and grandson. The Applicant is requesting a second tenant dwelling on the parcel to be occupied by his granddaughter.

Section 267-11 provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

Case No. 4975 - Carl Gerkens

The standard for granting a variance is whether the strict compliance with the zoning ordinance regulations would result in practical difficulty or unreasonable hardship. Variances should only be granted if in strict harmony with the spirit and intent of the zoning regulations and only in such a manner as to grant relief without substantial injury to the public health, safety, and general welfare. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the Applicant. McLean v. Soley, 270 Md. 208 (1973).

A variance permits a use normally prohibited and presumed to be in conflict with the ordinance. An Applicant has the burden of overcoming the presumption that the proposed use is suitable by meeting all the ordinance conditions or requirements for approval. Citrano v. North, 123 Md. App. 234 (1998).

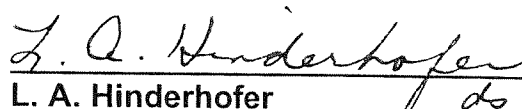
The Applicant testified that he is requesting the variance for the second tenant house in order that his granddaughter may live on the parcel and tend to some greenhouses. The Applicant failed to introduce any testimony whatsoever that the parcel was unique or that strict compliance with the Zoning Code would result in practical difficulty or unreasonable hardship.

Conversely, several area residents appeared and testified that the Applicant has additional development rights available which could be used to establish a residence for his granddaughter, that the Applicant had failed to prove that the subject property is unique, and that variances from the provisions of the Code would tend to depreciate property values.

It is the finding of the Hearing Examiner that the Applicant has failed to prove that the subject parcel is unique and that strict compliance with the Zoning Code would result in practical difficulty or unreasonable hardship.

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request for a second tenant house on the subject parcel be denied.

Date DECEMBER 13, 1999


L. A. Hinderhofer
Zoning Hearing Examiner